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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/945,378	08/31/2001	Michael B. Graham	CGR03-GN003	2155

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EXAMINER	
BEKERMAN, MICHAEL	
ART UNIT	**PAPER NUMBER**
3622	

DATE MAILED: 09/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/945,378	GRAHAM ET AL.	
	Examiner	Art Unit	
	Michael Bekerman	3622	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *12 June 2006*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *2-7,10-13,15-20,23-49 and 64-70* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *2-7, 10-13, 15-20, 23-49, and 64-70* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

This action is responsive to papers filed on 6/12/2006.

Specification

1. The abstract of the disclosure is objected to because it exceeds the 150 word limit. Correction is required. See MPEP § 608.01(b).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 2-4, 12, 13, 16, 17, 24, and 26-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Guyett (U.S. Patent No. 6,764,395).

Regarding claims 2 and 3, Guyett teaches the providing of a computerized game to a consumer (Column 2, Lines 39-46). The step of providing the game doesn't include or require execution of the game or any testing. However, Guyett also teaches testing the consumer's ability to recognize a marketing object (Column 2, Lines 39-46), the marketing object consisting of any of a trademark, promoter, product, or service (Column 1, Lines 25-27). Guyett teaches recognizing a marketing object (product, service, sponsor, or company) from a partial image (frame or slice) (Column 5, Lines

23-27). The game offered by Guyett is considered to be a puzzle. Regarding claim 2 which introduces the specific data content of the marketing message, it could be argued that Guyett does not teach such data content. However these differences are only found in the nonfunctional descriptive material and are not functionally involved in the method (or structurally programmed) steps recited. The steps would be performed the same regardless of data content. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of Patentability, see In re Gulack, 703 F.2d 1381, 217 USPQ 401, 404 (Fed. Cir. 1983); In re Lowry, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994). Therefore, it would have been obvious to one of ordinary skill at the time of the invention to have included any type of data content. Such data content does not functionally relate to the steps and the subjective interpretation of the data content does not patentably distinguish the claimed invention.

Regarding claims 4, 12, and 31, Guyett teaches the playing of a series of games (Column 7, Lines 5-8). Guyett teaches selecting the plurality of games based on demographics (Column 6, Lines 40-42). This reads on providing the next of the plurality based on demographics.

Regarding claims 13 and 32, Guyett teaches puzzle-solving performance as being stored for statistical analysis (to compute payout) (Column 10, Lines 17-20). Game performance is stored for each individual player, and this reads on being stored in accordance with demographic information.

Regarding claims 16 and 17, Guyett teaches discount gifts as being given based on puzzle-solving performance and consumer demographics (Figure 14 and

Column 10, Lines 21-25). Since the questions are based on demographics, and Figure 14 teaches discount gifts as being available from the sponsors, this reads on demographical discounted gifts.

Regarding claim 24, Guyett teaches presenting the puzzle to the consumer with an associated marketing message (the puzzle itself is a marketing tactic, and inherently presents a message) (Column 4, Lines 8-15).

Regarding claims 26, 27, and 29, Guyett teaches the game as being provided on a computer over the Internet (Column 5, Lines 44-52).

Regarding claims 28 and 30, Guyett teaches the game as taking place on, but not limited to, a computer (Column 5, Lines 44-52). Guyett doesn't specify television and telephone as being two other possible mediums for the game. Official notice is taken that television and telephone are both old and well-known ways of communicating and collecting information from individuals. It would have been obvious to one having ordinary skill in the art at the time the invention was made to run the game on any media outlet, including interactive television and telephone. This would allow a broader array of users to play the game.

Claims 5-7, 10, 11, 15, 20, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Guyett (U.S. Patent No. 6,764,395) in view of Forrest (U.S. Patent No. 5,679,075).

Regarding claims 5-7, 11, 15, and 23, Guyett teaches recording the performance history of a player (Column 10, Lines 13-16). Guyett also teaches a

plurality of puzzles, but doesn't teach the providing of a next of the plurality of puzzles based on consumer performance. Forrest teaches an interactive multimedia game using multiple puzzles that gives the user a new puzzle based on a satisfactory performance for the previous puzzle (Column 8, Lines 6-9, and Column 8, Lines 18-19). It would have been obvious to one having ordinary skill in the art at the time the invention was made to select a puzzle for the user based on performance of the user. This would give the player a greater sense of satisfaction. Guyett teaches the playing of a series of games (Column 7, Lines 5-8). Guyett teaches selecting the plurality of games based on demographics (Column 6, Lines 40-42). This reads on providing the next of the plurality based on demographics. The puzzles of Guyett are taken to inherently include marketing messages.

Regarding claim 10, Guyett teaches giving a cash gift based on puzzle-solving performance (Column 10, Lines 13-16).

Regarding claim 20, Guyett teaches providing a cumulative indication of the consumer's puzzle solving performance (Column 4, Lines 13-15).

Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Guyett (U.S. Patent No. 6,764,395) in view of Lipin (U.S. Pub No. 2004/0225558).

Regarding claim 25, Guyett teaches an advertising gaming system played over the Internet. Guyett doesn't teach providing the ability to notify other consumers about the game. Lipin teaches an affiliate program being offered by a website that would give affiliates money for every hit the affiliate generates (Paragraph 0027, Sentences 1-2). It

would have been obvious to one having ordinary skill in the art at the time the invention was made to offer an affiliate program for users with websites that want to refer other people to the game site. Not only would this generate more traffic, but it would also supply the game makers with information about how many consumers have been notified of the game.

Claims 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Guyett (U.S. Patent No. 6,764,395) in view of Forrest (U.S. Patent No. 5,679,075), and further in view of Lynn (U.S. Patent No. 6,595,859).

Regarding claims 18 and 19, neither Guyett nor Forrest teaches presenting a correct answer when the user loses. Lynn teaches an internet game that, after a loss, gives an advertisement integrated onto the same page as a message revealing that the user was close to winning. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a marketing message and a correct answer to the puzzle when the user loses. This would allow the user to know what they did wrong, while also providing an advertisement for more revenue to be gained by the game-makers. Regarding claim 18 which introduces the specific data content of the marketing message, it could be argued that Guyett does not teach such data content. However these differences are only found in the nonfunctional descriptive material and are not functionally involved in the method (or structurally programmed) steps recited. The steps would be performed the same regardless of data content. Thus, this descriptive material will not distinguish the claimed invention from the prior art

in terms of Patentability, see In re Gulack, 703 F.2d 1381, 217 USPQ 401, 404 (Fed. Cir. 1983); In re Lowry, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994). Therefore, it would have been obvious to one of ordinary skill at the time of the invention to have included any type of data content. Such data content does not functionally relate to the steps and the subjective interpretation of the data content does not patentably distinguish the claimed invention.

Claims 33-37, 42, 44-49 and 64-70 are rejected under 35 U.S.C. 103(a) as being unpatentable over Guyett (U.S. Patent No. 6,764,395) in view of McIntyre (U.S. Pub No. 2003/0191690).

Regarding claims 33, 42 and 64-70, Guyett teaches providing an interactive advertising message (game or puzzle containing a question) to a consumer (Column 2, Lines 39-46) and gathering data associated with the consumer's interactions with the message (Column 10, Lines 17-20). Guyett doesn't specify generating a statistical report and sending it to the commercial entity. McIntyre teaches a statistical report that keeps track of how many times a game is played and the sending of this report to sponsors of the game (Paragraph 0008). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a report to the commercial entity. This would aid the commercial entity in knowing how well-received their game is. Regarding claims 64-66 and 68-70, which introduce the specific data content of the statistical report, it could be argued that Guyett and McIntyre do not teach such data content. However these differences are only found in the nonfunctional

descriptive material and are not functionally involved in the method (or structurally programmed) steps recited. The steps would be performed the same regardless of data content. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of Patentability, see In re Gulack, 703 F.2d 1381, 217 USPQ 401, 404 (Fed. Cir. 1983); In re Lowry, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994). Therefore, it would have been obvious to one of ordinary skill at the time of the invention to have included any type of data content. Such data content does not functionally relate to the steps and the subjective interpretation

Regarding claims 34, and 35, Guyett teaches the game as being provided on a computer over the Internet (Column 5, Lines 44-52).

Regarding claims 36, and 37, Guyett teaches the playing of a series of games (Column 7, Lines 5-8). Guyett teaches selecting the plurality of games based on demographics (Column 6, Lines 40-42). This reads on providing the next of the plurality based on demographics.

Regarding claims 44 and 46-49, Guyett teaches monitoring player behavior and recording this into a database in connection with advertisements (Column 6, Lines 19-22). Guyett doesn't specify that the game gathers data related to brand type, taglines, product benefits, imagery, and communication language in particular. Official notice is taken that it is old and well-known that advertisements frequently contain brand type, taglines, product benefits, imagery, and communication language. It would have been obvious to one having ordinary skill in the art at the time the invention was made to gather information related not only to advertisements in general, but also related to the

above categories. This would allow the advertiser to understand more about how their product is doing in the marketplace.

Regarding claim 45, Guyett teaches gathering data (player history) related to a commercial entity's products (Column 1, Lines 25-27).

Claims 38-41, and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Guyett (U.S. Patent No. 6,764,395) in view of McIntyre (U.S. Pub No. 2003/0191690), and further in view of Forrest (U.S. Patent No. 5,679,075).

Regarding claims 38-41, and 43, Guyett teaches recording the performance history of a player (Column 10, Lines 13-16). Guyett also teaches a plurality of puzzles, but doesn't teach the providing of a next of the plurality of puzzles based on consumer performance. Forrest teaches an interactive multimedia game using multiple puzzles that gives the user a new puzzle based on a satisfactory performance for the previous puzzle (Column 8, Lines 6-9, and Column 8, Lines 18-19). It would have been obvious to one having ordinary skill in the art at the time the invention was made to select a puzzle for the user based on performance of the user. This would give the player a greater sense of satisfaction. Guyett teaches the playing of a series of games (Column 7, Lines 5-8). Guyett teaches selecting the plurality of games based on demographics (Column 6, Lines 40-42). This reads on providing the next of the plurality based on demographics. The puzzles of Guyett are taken to inherently include marketing messages.

Response to Arguments

In regards to the rejections of claims 2 and 18, applicant argues that none of the cited references disclose that the marketing message "includes marketing information reinforcing the consumer's knowledge of the commercial entity's logo, the commercial entity's trademark, the commercial entity's trade name, the commercial entity's tag line, and/or the commercial entity's product name". Examiner would like to point out that the content of the marketing message is non-functional descriptive material. Regardless of the content of the message, the invention performs the same functionality as the cited art. Further clarification of this has been added to the rejection paragraphs above.

In regards to the rejection of claim 33, applicant argues, "Guyett never teaches or suggests the steps of generating a statistical report from any gathered data and providing the statistical report to the commercial entity". New reference McIntyre has been added to account for this new limitation.

In regards to the rejections of claims 44 and 46-49, applicant argues that "none of the prior art of record teaches or suggests that the gathered data may be related to the consumer's awareness of the commercial entity's brand,...tagline,...product/service, and/or....brand equity." Applicant does not appear to have seasonably challenged Examiner's taking of official notice that advertisements notoriously include the elements of claims 44 and 46-49. It appears that the applicant is challenging the conclusion of obviousness rather than the existence of those advertising elements. That being said, since the invention of Guyett teaches testing consumers

about products, it would be obvious to test and store results on all the other aspects of an advertisement.

In regards to the objection of the abstract, Applicant has not commented on this objection nor has a new abstract been filed. Therefore, this objection has been repeated.

Conclusion

2. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Bekerman whose telephone number is (571) 272-3256. The examiner can normally be reached on Monday - Friday, 7:30 - 4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric W. Stamber can be reached on (571) 272-6724. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MB

JEFFREY D. CARLSON
PRIMARY EXAMINER